

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

JIMMIE LEE JONES, JR.,

Petitioner,

Case No. 1:04-cv-249

v.

Hon. Gordon J. Quist

PAUL RENICO,

Respondent.

_____ /

ORDER DENYING CERTIFICATE OF APPEALABILITY

The court dismissed this habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. This matter is now before the court on petitioner's motion for a certificate of appealability (docket no. 39).

Under the amended provisions of the Habeas Corpus Act, a petitioner may not appeal in a habeas case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Fed. R. App. P. 22(b) extends to district judges the authority to issue a certificate of appealability. *See Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir.1997). Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if petitioner has demonstrated a "substantial showing of a denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).

This Court denied petitioner's application on the merits. To warrant a grant of the certificate after considering the constitutional claims on the merits, "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In support of his motion, petitioner

asserts that he was not in violation of the personal protection order (PPO) issued by the Kalamazoo County Circuit Court, that his guilty plea for violating the personal protection order was invalid or illusory, and that the aggravated stalking conviction constituted double jeopardy in violation of the Fifth Amendment. Petitioner's claim that his guilty plea to the PPO was invalid or illusory is not an issue in this habeas action. The magistrate judge and this court have thoroughly reviewed petitioner's other claims and found them to be without merit. Petitioner's motion for certificate of appealability does not point to any flaw in the court's reasoning or any issue of fact or law overlooked in the adjudication of his petition. For the reasons expressed in the magistrate's report and recommendation and the court's order adopting that report and recommendation, the court finds that reasonable jurists could not find that this court's denial of the petition was debatable or wrong. Accordingly, petitioner's motion for a certificate of appealability (docket no. 39) is **DENIED**.

IT IS SO ORDERED.

Dated: October 11, 2007

/s/ Gordon J. Quist

Gordon J. Quist
U.S. District Judge